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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-752

CECIL ROY THURMAN,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TENNESSEE

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BRIEF IN OPPOSITION

MAY IT PLEASE THE COURT:

This is a petition for writ of certiorari in which the sole issue presented is the voluntariness of a consent to a search of an automobile.

JURISDICTION

The jurisdictional requisites are not adequately set forth in the petition. The respondents do not know where Judicial Code, Section 237 is to be found and despite a thorough search of the United States Code, have been unable to locate U.S.C.A. Title 28, Section 344.

OPINION BELOW

The unreported opinion of the Court of Criminal Appeals of Tennessee is found in the appendix to the petition herein.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The petitioner, Cecil Roy Thurman, was convicted of transporting more than one gallon of whiskey before a Sumner County Tennessee jury on November 15, 1971. He was sentenced to serve one year and one day in the State Penitentiary. A motion for a new trial was made and overruled and an appeal to the Tennessee Court of Criminal Appeals was granted. That Court unanimously upheld Thurman's conviction. The petition for certiorari was filed in the Tennessee Supreme Court and denied on September 18, 1972.

At 7:00 P.M. on the evening of February 11, 1971, a reliable confidential informer called Police Officer Charles Greer, at this home in Gallatin, Tennessee. In the absence of the jury, Officer Greer testified that he had known this informer for seven or eight years and had gotten reliable information twenty to twenty-five times. On cross-examination, Officer Greer stated that the information has proved to be reliable 99 to 100% of the time. The informer told Greer that on the night of February 11 or in the early morning of February 12, J. C. Fuqua and Cecil Thurman, the defendant-petitioner, were going to be transporting untaxed whiskey from Sumner County into Robertson County. The informer further stated that the whiskey would be transported in either one of J. C. Fuqua's cabs, which are readily identifiable by their markings, or Thurman's 1960 Pontiac automobile. Officer Greer stated that he was well acquainted with this automobile.

Several officers were then sent to cover different roads and the culprits were spotted about two hours later. As the informer had predicted, Fuqua was driving one of his cabs and Thurman was right behind him in his own car. Officer Greer and two other officers followed Fuqua and Thurman for a short distance and pulled them over. (Separately) As Officer Greer was getting out of his car, the defendant shouted to him out of the open window of his car, "Mr. Greer, you have hit the jackpot this time." To which Officer Greer replied, "How much?"

"31 gallons," said Thurman.

Officer Greer asked the defendant if he could look in the trunk. The defendant replied, "Yes, sir, because you have got me this time." Thurman then got out of his car, unlocked the trunk and opened it himself. Inside were 31 gallons of untaxed white whiskey, one of which was broken.

Officer Greer further stated that when he got out of his automobile, he immediately recognized Cecil Thurman and he smelled the strong odor of white whiskey. Of course, when the trunk was opened, the source of the odor was revealed. One of the glass jugs of whiskey was broken.

ARGUMENT

There can be no doubt that the arresting officers had probable cause for a warrantless arrest in this case. See *Draper v. U. S.*, 355 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959); *McCray v. Illinois*, 386 U.S. 300, 18 L. Ed. 2d 62, 87 S. Ct. 1056 (1967). The existence of probable cause for the search also obviates the need for a search warrant under the facts of this case. *Chambers v. Maroney*, 399 U.S. 42 (1970).

But despite this authority and despite the representations of the petition herein, it is clear that the Tennessee Court of Criminal Appeals found that this search was voluntary and that no search warrant was necessary even if probable cause for the search had not existed. Indeed, as the State's recitation of the facts shows, a stronger case of voluntariness can hardly be imagined.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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